

Public Sector Ethics and Government Reinvention:

Realigning Systems to Meet Organizational Change*

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If angels were to govern men, neither external nor internal controls on Government would be necessary. In framing a Government which is to be administered by men over men, the great difficulty lies in this: you must first enable the Government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the Government; but experience has taught mankind the necessity of auxiliary precautions.

James Madison, Federalist #51 (1787)

More than 200 years ago Madison recognized the need for developing systems to control the excesses of government and government officials. In the United States, these auxiliary precautions included separation of powers, a bicameral legislature, enumerated powers granted to the Federal government, the states and the people, as well as separation of powers between executive, legislative and judiciary at the Federal level. In time, these precautions would include the development of bureaucracy, of a merit based civil service, and of oversight systems designed to prevent abuse of office and corruption.

Although it has been ignored to this point, the debate between the advocates of the new public administration¹ and those who want to preserve the current order is now turning into an argument about these same auxiliary precautions. This paper will focus on the need to both preserve, and realign integrity systems in government -- Madison's auxiliary precautions -- to fit the changes being wrought by the new public administration.

¹In the international context, "the new public administration" refers to the programs of devolution, downsizing, privatizing, customer service, and the general narrowing of the scope of government activity. New Zealand is credited with initiating this process in the early 1980s, but Australia, England, Norway and other OECD countries have followed. (See OECD, 1995) In the U.S. the best known such program is perhaps the National Performance Review.

There is much with which to credit the new public administration (reinvention) literature and subsequent initiatives by governments. The advocates for this new perspective on public functions have forced governments to adopt, or at least confront, a new paradigm about the role and function of government. They have focused on the delivery of government services, attempted to set standards for efficiency and effectiveness, and forced agencies to clearly articulate their missions and goals. However, one implicit theme of the reinvention literature and programs is that if organizations are restructured, management systems will automatically adapt to these changes. These management systems encompass the laws, the offices and officers with distinct professional management responsibilities. Often it is assumed that these management systems will automatically “fit” government. In the U.S. the list of management systems would include programs responsible for the merit system, procurement, acquisitions, contracting, environmental policy, administrative procedure, Equal Employment Opportunity, whistle blowing, the Inspectors General and Designated Agency Ethics Officials. Recently the Congressional Research Service identified 80 such management laws and systems. (Moe, 1997a) Little attention was paid to adjusting these systems to new administrative realities, much less to their enabling legislation.

In fact, very little attention has been paid to realignment problems. Even more vexing is that many of the dilemmas created have been ignored, and in worse cases concealed by only focusing on the “positive,” e.g., the National Performance Review (NPR) in 1996 solicited “only success stories” from federal agencies. This resulted in several bench marking studies. (e.g., NPR, 1997a, NPR, 1997b) This often results in festering, unresolved issues which, if left untreated, will lead to the undoing of many of the major management reforms implemented through the new public management.

The focus of this paper is on integrity systems that undergird government ethics as one of the key management functions of modern democracies. (Moe, 1997b) By “integrity systems” I mean the systems, programs, laws, regulations and codes with which government regulates the behavior of government employees, as well as individuals outside the government who regularly work for or contract with the government. One of the standards of an effective public service is that it is populated by “objective” employees who do not have a personal interest in the outcome of government action; they are umpires who make “calls” about violations and encourage fair play, but who do not participate in the actual “play of the game.” In the new public administration this standard of purity, a nonconflicted individual acting for government, will be significantly challenged on a number of fronts, e.g the demand for “business” acumen, the focus on outcomes, the demand to privatize or contract out functions that are not inherently governmental.

Perhaps the most profound break with conventional views of public administration has come from privatizing what were traditionally (some would argue inherently) governmental functions. The most frequent examples of this come in the form of businesses who perform such functions under government contracts. Yet those who contract with the government for providing these services (and sometimes goods) are usually exempt from the most rudimentary ethical standards or regulations. How can the government guarantee that the public interest -- beyond mere efficiency standards -- is served?

The essence of any ethics system for the public service is that it assures the public that its government is working in the public interest. This paper will focus on the impact of the new public administration on public service ethics in an environment that emphasizes privatizing, contracting, budgeting for outputs, and business skills. It will highlight the fundamental tensions between the reinvention movement

and anticorruption systems; discussing the potential for creating a government that is more “responsive and lean” while at the same time preserving public integrity. Finally, this essay will highlight the concrete issues confronting realignment and examine solution developed by other countries.

Understanding the Problem We Are Trying to Solve:

Alexis de Tocqueville, in comparing the French and American systems, needing a word to describe this newly democratized “system of government,” coined the term *bureaucracy*. The major purposes of bureaucracy was to minimize corruption and maximize democracy. (Gilman, 1996) It did this by fractionalizing responsibility so that no one person could abuse the decision-making process, especially when it came to government obligations or expenditures. These new bureaucracies were built piecemeal and were added to on a regular basis to account for every fresh scandal. (Gilman, 1995) It is also true that these systems were also viewed as mechanisms for greater efficiency -- something especially ironic today. (Nelson, 1982, p. 766)

In many countries, as the executive and legislative branches struggled to cope with newly arising forms of corruption, no one was ever made responsible to oversee what had come before -- much less how new laws and orders would integrate with what had been implemented previously. The result was that system was built upon system, often with no logical integration between them, and often with contradictory requirements. The layering of integrity systems became so pervasive that bureaucracies learned to operate independently of many legislative or executive controls, often through voluminous regulations, resulting in a “priesthood” of expertise in the government department.

The impact of this process was summed up by Michael Nelson as one of the ironies of American bureaucracy: “*agencies organized to avoid evil became that much less able to do good.*”(Nelson, 1982). Recently, Anechiarico and Jacobs claim to have found the penultimate example of the nightmare of compliance. They argue that the New York City police department became ineffective because of the overwhelming number of compliance rules. (Anechiarico and Jacobs, 1996) In trying to avoid this problem, and make government more responsive, I will illustrate how the advocates of the new public administration have focused almost solely on gaining economic efficiencies over traditional bureaucracy, while ignoring some of the more fundamental residual problems of ethics and integrity in government organizations.

Ethics Systems: Compliance vs. Integrity:

The literature in public administration focuses on the distinction between compliance and integrity-based systems, with a general bias toward the latter. (e.g., Cooper, 1998, Rohr, 1989, Burke, 1986, Lewis, 1991). The recent OECD study, *Ethics in Public Service*, focused on the tension between compliance and integrity regimes as a defining framework to create a taxonomy of ethics systems. (OECD, 1996, p. 63). In many ways this distinction is a straw man. Compliance-based systems are supposed to be only rule or law based with little room for individual conscience or decision. Integrity-based systems are designed to increase human autonomy through aspirational goals avoiding rule structures. Perhaps these constructs can be framed as ideal types. But, the empirical reality is that they are ends of a continuum. For that reason, a more informed discussion should more fully integrate the various dynamics (psychological, legal, philosophical) in this process. Such an exhaustive analysis is not the purpose of this paper, but it is important for the reader to have a flavor for the issues.

Compliance-based rule systems at their worst degenerate into systems of casuistry governed by a priesthood of arcane specialists. They exercise sole authority in providing authoritative interpretations of rules in more and more narrowly defined circumstances. Such a casuistry does not have to be destructive and nonresponsive. However, to be effective such a system (as proposed by one leading ethicist in bioethics) must remain open for interactive communication. The problem with compliance systems is not that they promulgate rules, but that the agencies responsible for them can easily become more and more isolated from the daily processes of government.

On the other hand integrity-based systems at their worst are merely aspirational. These become general, very abstract guides of performance with no method of accountability, much less enforcement, and no technique for receiving advice or education. Empowerment of public officials in such a setting can lead to dire consequences: *Empowering ethically bankrupt people simply leads to corruption more quickly.*

The question confronting us in the new public management is how can we flatten, compete, reduce, and simplify government while making it more responsive, without creating the potential for public services to degenerate into a corrupt cesspool? In a recent book George Frederickson vividly highlights these problems.

The Critique of the New Public Administration: Efficiency without Ethics

Frederickson asserts that reinvention (one face of the new public administration) inherently leads to corruption. In *The Spirit of Public Administration* (Frederickson, 1996), he constructs a continuum between the governmental model at one end and the enterprise model at the other. He argues that the new public administration pushes government functions away from the governmental model and towards the

enterprise model. This change leads to corruption, as employees adopt practices that are common in business, but are considered unethical in government. In making this argument, he is right in the sense that the need for impartiality and the sense of public duty are de-emphasized in the new public administration. I disagree with Frederickson's claim that the new public administration inherently leads to corruption.

This hard determinism seems unwarranted. The new public administration demands the flattening (reducing the layers of government, see Light, 1995) and simplifying of government, and the introduction of competitiveness and flexibility into existing systems. Frederickson rightly points out that among other things, "reinventers" target existing compliance-based ethics structures. These structures have evolved through accretion over the years to form a rule-driven system that to some degree ensured the public's confidence in government. Frederickson laments the loss of these structures, expressing the fear that their loss will "increase the propensity for corruption and unethical behavior." (Frederickson, 1996) Aside from the questionable equation of private inclination with unethical practices, this argument fails because it portrays the change as necessitating the complete elimination of any ethics system. This extreme change need not, and probably would not, be the reality for the new public administration. In flattening the organization, the question will not be which parts of the system to eliminate, but which to keep.

Having considered the limits of Frederickson's more traditional argument, however, I must also address those who would like to ignore the negative consequences of the extremes of the new public administration. Within the framework there is an emphasis on administrative autonomy. This is most obviously found in the arguments about empowerment, but also found implied throughout the literature. (See Osborne and Gaebler, 1992) The focus in this literature is on ends -- efficiency, customer, cost -- not on the means to these ends. The means are viewed as inhibiting or delaying achieving ends. So if we

empower civil servants, they will be free -- or at least this is the theme of much of the literature. The question is *free* to do what?

Some scholars argue that employees should be freed of constraints, and when these chains fall away, a new ethic of public service will develop. (e.g., Pinkerton, 1995) A golden age of empowered “right” actors would emerge from the destruction of the rule-bound edifice of the compliance-based ethics program. Such a magical emergence of ethics seems unlikely. Most modern social psychological studies suggest the opposite might result, because all populations are made up of individuals who resolve ethical dilemmas in markedly different ways. (Kohlberg, 1981, Rest, 1979) This notion of autonomy does not automatically elicit trust in government in behalf of the citizen, nor does it necessarily “free” the civil servant.

This bias toward the maximum autonomy of the civil servant, without the context of the purpose and need for integrity in government, builds upon some of the more naive concepts in public administration. Ignoring widely desperate behaviors of human beings, and the even more complex human interactions in organizations (See Bovens, 1998, Ch.1), the new public administration literature generally expects far too much from the individual. Willard Gaylin and Bruce Jennings argue that the notion of the autonomous, rational individual ignores the reality of human life:

We are not as free and self-determining as we would like to believe, and we are not as independent as we pretend to be. We must face the fact that we are not as rational as we would like to think we are. The rational roots of our conduct are pathetically overvalued. We must appreciate the power of emotions over human behavior in order to effectively institute changes in that behavior. (Gaylin and Jennings, 1996)

Taking into account the inherently emotional, irrational side of human beings leads us to seek some safeguards against the potential for ethical anarchy that might result from an excessive emphasis on

individual autonomy. Gaylin and Jennings propose the need for some framework, some system to avoid this anarchy: “Despite a preference in the culture of autonomy for rational persuasion and a bias against manipulation and coercion, persuasion rarely works. It is coercion on which society must depend.” We must, then, have some system that serves to *motivate* employees into ethical behavior.

The balance between compliance and aspiration (coercion and motivation) is one of the most difficult choices confronting contemporary governments. The debate about these usually devolves into treating them as polar opposites. Rather, what must be done is a weighing of the concerns of traditionalists like Frederickson with the thrust of innovation and change within the new public administration reforms.

A “hard” version of Frederickson’s thesis would lead one to conclude that the reinvention movement must be stopped if we are to prevent massive corruption of government functions and officials. I do not believe it is either pragmatic or prudent to suggest reversing this tide. Rather, what should occur is an understanding of what needs to be done in realigning ethics systems to fit the new models of public administration. This realignment must occur with administrative reforms to prevent entirely new variations of “government” corruption. I will consider below seven critical questions which, if answered effectively by government leaders, can avoid this potential ethical chaos while preserving the most valuable aspects of the new public administration.

How Have Ethics Systems Been Realigned to Fit the New government Reality?

Perhaps the greatest gap in the new public administration systems is their failure to integrate ethics (or integrity) structures within this new systemic regime, e.g., privatizing functions, horizontal organization, outcome orientation. They mistake (I believe) values that they hold (responsiveness, effectiveness, efficiency) for *the* ethics of government. The current administrative systems in place generally emphasize

what are usually considered public administration ethics: e.g., impartiality, fairness, justice, professionalism and equity. (e.g., Gilman, 1989) Because of the dissonance between these value sets the three general tendencies are to: i.) ignore ethics systems, ii.) do away with them as so much bureaucratic flotsam, iii.) or create a parallel (often redundant) system.

Ignoring ethics systems is a perilous course. It can ultimately lead to unraveling many of the most important programs that are at the base of the new public administration program.² As an example, let us take the case of a country in the Pacific Basin in which an agency decided to privatize a government function by forcing those government employees who were employed providing the service, to form a company and then be transferred to that company as employees and owners. The new firm had exclusive rights to provide the function for a few years and then the government will have the right to open the process to the most successful bidder. As a process, this appears to be a sensible, human way to privatize the process -- until you begin raising integrity issues. Who writes the contract? Who negotiates the contract? Who negotiates the price, facilities, materials, etc.? The most obvious answer in this case was to turn to the employees who are experts in the area. They were then “empowered” to negotiate and write their own contracts. Apart from the obvious conflict of interest, it was also a potential violation of a criminal statute. The agency literally forced employees to violate criminal laws.

The second approach is simply to do away with uniform systems. This is done in two ways. One is by “decentralizing” the function to the agency or sub-agency level. The other is to do away with compliance systems completely. The former method simply does not work. In one case all of the agencies

²The examples in this section have been sanitized to avoid any embarrassment or perceived slight. They all however are “real” and have occurred within the past five years.

of a government were free to develop their own rules. Essentially they adopted the rules exactly as they had been previously written. However, the compliance rules remained absolutely the same. The system became even more bureaucratized because there was no longer a way to amend the rules to fit the new realities. The recommendation to “do away with compliance systems” has been frequently discussed, but I have never seen it fully implemented (Burke, 1994). The reason, I believe, is that even to the most strident advocate of aspirational goals such an approach would lead to ethical anarchy at worst and moral relativism by agency at best.

The third approach is the most common: Leave the old compliance “stuff” in place but create more of an aspirational superstructure to make it irrelevant. Rather than this occurring the tendency is to potentially create an institutional civil war. In the Phillippines, the Moral Recovery Commission was created with an emphasis on quality circle design and aspirational goals: calling individuals back to their nationalistic pride; putting a Bible on every bureaucrat’s desk; and health programs of exercise and dance. The agency responsible for legal compliance dismissed the organization as irrelevant and has threatened an investigation of commission members for violating integrity laws.

What should occur is an in-depth examination of how the new public administration systems fit into and are affected by ethics and integrity structures. These structures can be changed to fit into the governmental reality in a variety of ways. First, laws should be reviewed and redundancy or needless bureaucratic elements should be eliminated. Second, laws and regulations should ensure that employees empowered by the new systems are not also finding themselves violating laws or standards of conduct. As one wag has commented, ethics and integrity systems are the equivalent of brakes on an automobile for

organizations. Even in the most streamlined governments, one would still want the ability to slow down and even stop.

If the process of reinvention is to be more than a fad, the advocates of this new management approach must effectively engage the question of how to prevent confusing ends and means. There are *means* which drive the paradigm of the new public administration (e.g., entrepreneurship) that can, under certain circumstances, undermine the legitimacy of government. Good compliance systems should set the boundaries of these means to prevent the cure for the problem of bureaucracy from being “worse than the disease.”

Compliance Systems: Are They Part of the Problem, or Part of the Solution?

The notion of a compliance-based system has been viewed as antithetical to the goals of the new public administration. (e.g., Burke, 1994) Some argue: You cannot empower people to do their job and at the same time have them constantly afraid that someone will accuse them of wrongdoing. The model they use is that of business which operates unfettered except for the discipline of the marketplace. Therefore, the only discipline the government ought to have is the discipline of a competitive market for its services.

Such an approach misunderstands several key elements both about the dynamics of the market and the purpose of government. First, over the past century there has been a growing professionalism in the private sector due to the need to rely on individuals who behave according to *specific, professional compliance standards*; e.g., accountants, architects, engineers. Second, the purpose of compliance in government is to give guidance to employees and ensure the integrity of the government in the eyes of its

citizens. There is nothing that would suggest that an effective compliance system cannot be somehow realigned to the realities and *needs* of the new public administration.

There must be some fundamental compliance system on which to build individual integrity. Often a code of conduct with vigorous enforcement will serve to create this foundation.³ Codes accomplish a variety of goals that cannot be accomplished aspirationally. Judith Lichtenberg makes a powerful argument for the critical role that codes can play in organizations. (Lichtenberg, 1996) The code of conduct should be uniform, applying to everyone within the branch of government. It would apply from the Chief Executive Officer of a country to the janitor who cleans his or her office. It should apply to military officers and cabinet officials. Additionally, enforcement should be uniform. And if there is any variance in either the strictness of the rules or the application of penalties, the more senior an official is the more restraining should be the code, and more harsh the punishment.

There also must be at least a basic system in place to assure the consistency of standards and that they are **enforced**. The new public administration steers away from concepts like enforcement because they believe it somehow contradicts the notion of empowerment. If one is not able to enforce minimal standards, what will keep government officials from corrupting the system? As simplistic a concept as *economic rent* is, it is clear that systems that cannot enforce standards will encourage economically based behaviors that will undermine government. (See Mauro, 1997)

Upon this foundation of “minimally acceptable standards” must be built a structure of aspirational goals. These should be the ideals of public service, reaching to meet the expectations that citizens have of

³Willa Bruce argues for a distinction between Codes of Ethics and Codes of Conduct. I am using her “convention” here, although I do not necessarily agree with her argument. (Bruce, 1996)

public officials. This type of structure can only be built within a model of leadership within the public service.

Do Systems Exist That Can Provide Practical Ethics Advice to Government Managers?

Aristotle reminded us never to be a judge in your own case. Even a minimal compliance/aspirational system should be led by persons charged with knowing the compliance rules and possessing a vision of the aspirational values of the organization. This independent voice can be created through an autonomous office of ethics or by an ethics counselor. This administrative system, however, seems to contradict the philosophy of reinvention movements.

Many advocates of the new public administration assume that empowerment ought to enter into all aspects of work and this should include empowering individuals to think ethically. It assumes that individuals can be taught to reason ethically, and once taught behavior will follow. A general goal of developing ethical reasoning skills in managers should become part of the training curriculum for management. However, such an approach tends to ignore two pragmatic problems. First, the reform movements have never advocated doing away with all compliance rules, only simplifying them. Second, there will be broader areas of responsibility for public servants as organizations are flattened. The result is that there is a greater need for a system to provide timely advice on ethics matters for managers who will have far broader duties.

To be effective in “empowered” organizations, these systems have to be more than advisory. They have to be able to give managers advice that will protect civil servants not only from criminal prosecution or administrative penalty, but that also has legitimacy in the eyes of the press. If “bad” ethics advice is given and followed, then it should be the ethics officer -- not the official -- who should be held

responsible. A truly empowered organization must create a system to provide this fundamental protection for their managers.

A brief word is necessary as to why these ethics offices/officers should be independent. The ethics officer needs to be empowered to tell the truth, which might limit the activities of those he will be counseling. In many governments there is an *Icarus Principle* for integrity officials: at some point senior officials who feel threatened or profoundly disagree with advice will attack the ethics officer. As an example, in a country in the Middle East an integrity office was beginning to make a significant impact on corruption. Unfortunately, one of the money-laundering trails led directly to the Chief Executive's son. When the head of the office "unofficially" discussed this with him (seeking a nonpublic solution) he was graciously thanked by the official. The next morning the state-controlled newspaper attacked him and pilloried his agency, he was characterized as an "enemy" of the state, was removed from office by the Prime Minister and forced to take a demeaning, much lower position in the government.

In summary, an ethics program must not only have strong leadership but must carefully balance institutional arrangements in government. It must be independent enough to carry out its function without threat or punishment. Yet, such offices if too independent can become "a sort of independent police force, a band of roving commissars . . ." (Quoted in Thompson, 1992, p. 254) The necessary balance of independence, authority, and organization will vary in accord with the constitutional and institutional frameworks of government.

How Are Leaders in Public Service Chosen to Lead These "New" Organizations?

The comforting thing about the "old" systems of public administration is that they were so law and regulation bound, that deviations from acceptable behavior were usually aberrations. The structure of

bureaucracy was inhibiting, both to innovation and unethical conduct. The new world of public administration presents a very different challenge. How are the leaders of these organizations being selected and trained?

Very little thought has gone into what leadership the new public administration will require. In many countries there has been brief attention paid to whom is actually being selected to carry out these mandates. In countries with leadership systems like the United States, there has been little thought given to what the most effective mixture of political appointees to civil servants should be in leading major, executive change programs. (Light, 1995) Even senior officials whose primary emphasis is “reinvention” tend to pay scant attention to compliance and integrity systems. An official whose primary focus had been reengineering his department, when caught up in an ethics debacle, claimed that his own personal sense of integrity should be the standard to judge him. And although he was given a set of government standards of conduct to read he was far too busy to pay any attention to them. He was pressured into resigning from office, because although he was given the rules, and signed a document stating that he had read them, he did not actually review them; nor subsequently consult with ethics officials about his actions. Ultimately, he blamed the rules for his downfall never understanding his active complicity in his own destruction.

In the new world of flattened organizations, leaders must understand and conform to the rules and live by them. If rule systems are in the way of accomplishing new public management goals, they must be changed not ignored. Leaders must also have a sense of the aspirational fabric of the integrity systems in government and be strong advocates and exemplars of integrity. For example, individuals who preach honesty but cheat on vouchers induce organizational behaviors that can be profoundly dangerous. People in organizations quickly find out about the behavior and see it as license for others to do the same thing;

creating a *geometry of corruption*⁴ within the organization. A small act, illicitly using the computer for personal work, can escalate among subordinates to operating a separate business using the agency computer.

The standard of leadership should be to be “purer than Caesar’s wife,” both in terms of the reality and appearance of inappropriate behavior. However, it also will require a higher standard of accountability for government leaders than has been expected previously.

Under These New Systems How is Management to be Held Accountable?

The foundation of accountability in the new public administration requires organizations shift from output measures to outcome measures.⁵ As a budget tool, this can create a dynamic shift. As a management tool, it only provides a partial solution. When applied effectively, the approach allows government to evaluate a program’s “ends” but pays absolutely no attention to the means of achieving those ends. There needs to be an effective evaluation of the outcome “means” as well as “ends.” A confusion between these can lead to disastrous consequences.

In two recent studies, Steven Cohen and William Eimicke (Cohen and Eimicke, 1996; Cohen and Eimicke, 1997) examine the single dimension of the impact of entrepreneurship on the integrity systems of government. For them there is a significantly mixed record in which the means notably clouded the ends. The two studies focus on the derivatives’ scandal in Orange County, California, the successful stewardship

⁴By *geometry of corruption* I am referring to the how condoning corrupt behavior tends to elicit multiple illicit behaviors, at various levels, by others throughout the organization.

⁵At the Federal level in the United States this shift is most clearly understood through the requirements of the Government Performance and Results Act (1993) and the OMB Circular(s) A-11 (1997) implementing it.

of Stephen Goldsmith in Indianapolis and the involvement of New York City Mayor Rudolph Giuliani in the fight between Time-Warner and Fox Corporations over control of cable television in the city. In the latter case the mayor was accused of conflict of interest because his wife was a reporter for the Fox television station in New York City.

The problem that Cohen and Eimicke identify in both essays, is that with the change from output to outcome measures there has not been a commensurate change in accountability for the integrity of how those outcomes come about. For example, Robert Citron, the County Treasurer of Orange County, California was held responsible by the Board of Supervisors for effectively investing receipts to allow a decrease in taxes and fees. The high risk investment strategy he employed led to the bankruptcy of the county and felony charges against him. This was a purely entrepreneurial “gamble” on Citron’s part devoid of any compliance to any set of standards.

The Orange County case illustrates the mismanagement that can occur, but in a sense it distracts us from the more simple issue of accountability. The reality of modern public service is that the only truly punishable offense is malfeasance -- violation of criminal standards. The problem of misfeasance or mismanagement is usually dissipated to the entire organization with no one person held responsible. Even the best civil service systems have failed to deal with the problems of lack of performance. As an extreme example of this, in a recent review of a series of complaints about a senior manager in the U.S., the manager wrote in response: “I agree. I am a lousy manager, but that is no crime.” (Integrity, 1997) And, in systems designed with bureaucratic redundancy in integrity systems, the broad interests of the government can still be protected -- even from the incompetent.

Under regimes designed through the lens of the new public administration the situation described above is an imminent integrity disaster. Because public managers will be empowered through initiatives like reinvention, they must also be made individually accountable. Failure under such a system can never be condoned as failure of the group. It is always a failure of leadership. Cohen and Eimicke take this argument a step further by pointing out that incompetence is also a violation of ethics.

There is also an ethical dimension to gross incompetence. Failure due to changed conditions or bad luck is one thing, failure due to lack of technical expertise and an appropriate level of skill to perform a task is a form of dereliction of duty. Exercising such incompetence at the public expense is a violation of public trust, and abuse of office and a breach of ethics. (Eimicke and Cohen, 1997, p. 25)

In environments that encourage entrepreneurial behavior, it appears reasonable to believe that ethics systems must be realigned to deal with misfeasance and mismanagement as violations of ethical standards. More and more of what was traditionally government activity is done outside of government (e.g. contractors), through quasi-governmental entities (e.g., the British Quangos), or outside of traditional governmental activities (private investment). Unless ethics systems are realigned and expanded to account for these changing realities, necessarily encompassing incompetence, governments seem to be inviting charges of corruption and scandal.

What are the Necessary Transparency Systems for this Reinvented Government?

Fundamental to effective government is the perception on the part of its citizens that it is operating honestly and fairly. In contemporary society this often requires an openness on the part of government employees that appears to violate their right to privacy. Courts have generally upheld transparency programs, finding that the peoples' right to know outweighs government employees' individual rights to privacy (see Duplantier, 1979). Many systems are available for transparency - from public commentary

periods for rule-making to clarity of procurement processes. The most popular recent mechanism has been financial disclosure.

In a very concrete way, proactive public financial disclosure systems, with the power to ensure that decision makers rid themselves of interests that would conflict with their public duties, are one of the easiest ways to defuse cynicism about the behavior of public officials. These systems can be compliance or integrity based. They are often viewed as a way to get information. In a truly “reinvented” government, financial disclosure ought to be a prophylactic to protect the public servant. In several countries, disclosure systems simply require officials to file (often in sealed envelopes) disclosures, until an ethics charge is actually brought against an individual, e.g., Romania, the Ukraine, Egypt. Such reactive systems, rely on the threat of providing additional evidence *after* you are caught to somehow motivate individuals to right action. This is not only counter-intuitive, but it also seems to violate the very purpose of the new public administration: motivating individuals to seek innovative solutions to problems.

Disclosure systems should have independent reviews of assets and interests, providing counseling, and in some cases requiring solution. These systems should allow government employees to rid themselves of conflicts of interest in the least intrusive way possible. It should lead the public servant to have a disclosure form that should be “clean” of any ethical questions. The second part of the process is that these forms should be readily available to the public -- so that the press and public can evaluate the personal interests of the government employees with their government activity. Such a system should require filing on a regular basis. Depending on the purposes of the system, some governments can include all employees, or limit those required to disclose by focusing on their responsibilities or positions.

The key to the success of such programs is the allocation of sufficient resources. Many governments have created disclosure systems as window dressing with either no intention of making those programs effective or no knowledge about the resources required. Frederick Herrmann persuasively argues that the experience in American state ethics offices suggests that they are often purposely made ineffective, especially in the area of disclosure. His three pillars of effectiveness are: independence, sufficient budgets, and the ability to enforce the law. (Herrmann, 1997) For him the essential sign of the failure of an ethics office is trying to run a financial disclosure system without computers. This is asking ethics commissions to “make bricks without straw.”

There is an irony in the fact that the strongest, most independent systems are those that do not cover legislators. We find the weakest disclosure systems in legislatures, because we ask “the regulated to be the regulators.” Dennis Thompson has done an admirable job of explaining why legislatures often fail miserably when they try to regulate their own behavior. His solution, at least for the United States, is for Congress to set up an independent office, with the power to issue advisory opinions, and enforce their rules. (Thompson, 1995)

In summary, transparency systems should not have enforcement as their major purpose. Rather, the primary focus should be on prevention. For such a system to work effectively, these offices (centralized or decentralized) must have the independence, budget and authority to ensure that individual ethical conflicts will not erode confidence in the government and its administration. Ironically, the effectiveness of such systems might be more important in the era of reinvented government than ever before.

Have Private Sector Entities Been Integrated into Government Integrity Programs?

Such a question often strikes officials as outlandish. Isn't the purpose of the new public administration to take advantage of the efficiencies of the private sector? If so, why would we want to handicap them with the programs that lead to inefficiencies in the first place? Such a chain of reasoning makes several flawed assumptions. First, if systems for providing clear, timely ethics advice are available, these programs ought to facilitate governmental responsiveness, not retard it. Second, it assumes that the purpose of government is *only* efficiency. Even within the most liberal of the new public administration theories, attention must be paid to the means as well as the ends. For instance, the mafia might be the most efficient organization for disposal of toxic waste, but their reputation would undermine any confidence that such waste disposal would be done honestly or responsibly.

As government diffuses responsibilities to the private sector, it is becoming evident that government must also hold those entities to ethical standards. There are a multitude of problems that have already occurred. The following are a brief sampling of sanitized examples⁶.

- A large agency contracts with a private company to supervise government employees in a narrow procurement area. A subsidiary of the private company puts a bid in on several procurements for which they are responsible. The private company's supervising officials order the employees to give the contract to their company.

- An agency decides to privatize a function and helps the government employees who work in that function by allowing them to form a private company to provide this service, and guaranteeing a sole source contract for three years to give them a reasonable start. The people responsible for writing the contract and issuing it are the same people who will sign the contract.

- A city privatizes garbage collection in order to rid themselves of the corrupt public sanitation bureaucracy. A private company wins a bid for garbage collection that saves the city 30 percent of the overall costs. Within a year there are massive complaints because the private company is insisting on cash facilitation payments to ensure "prompt" garbage pickup.

⁶These examples are taken from four different countries, on four different continents, and two of them are among the 10 most developed countries.

- A government ministry decides to privatize all but the policy-making function of their personnel office. A large, private personnel firm is hired to do all advertising, classifying, certifying and selection for job positions. The agency hires 25 summer interns. Toward the end of the summer, the agency head discovers that all of the interns are either the sons or daughters of managers of the personnel firm.

Each of these instances would not be covered by typical government ethics systems. Such systems assume that these functions will be done by public employees, and for that reason many laws, standards of conduct, and regulations simply would not apply to private sector employees. Even aspirational codes of conduct would not be clearly applicable to a non-government workforce.

What must occur is an effective realignment of rules to better interface with the new reality of government structures. It is not viable for the systems created under the rubric of the new public administration to be exempt from compliance or aspirational standards. The mix of these might vary. government must attach accountability standards (in terms of integrity) to any nontraditional systems that they create. The difficulty of this task should not be underestimated. As Andrew Stark writes: “Concepts such as the private-public distinction and the nature of fiduciary responsibilities in government are considerably more complex than - and hence pose a raft of new questions in the realm of conceptual analysis beyond - what their purely theoretical exposition alone would imply.” (Stark, 1997) His essay is “simply” trying to account for the difference between personal and government interests, and how important this distinction is to fundamental democratic values. These problems are compounded by the far greater difficulties created as government and private functions are interwoven.

As difficult as it might be, governments will be forced to address this issue and determine effective policies and implementation strategies. A government’s answer to this last question (number 7), might well determine the success or failure of their new public administration programs. This might take the form of

developing either separate systems for public and private elements of government or develop a new compliance system to account for these reengineered programs.

It also might take the more subtle form of the United States Corporate Sentencing Guidelines. This system in effect allows a judge to discount fines in proportion to the elements of an ethics system corporations have in place. Lynn Paine has demonstrated that the new guidelines could potentially reduce \$54.8 million dollars in fines to \$685,000 if a corporation met all of the elements in the sentencing guidelines. (Paine, 1994) The economic incentives inherent in such a set of procedures have led to a burgeoning of ethics offices in large corporations.⁷ Even more interesting, is that the content of these ethics programs, especially for companies that do significant work with governments, are almost a direct reflection of the Federal, executive branch ethics standards. The obvious limitation of such a regime is that there is little impetus for small, private sector entities to develop such systems.

Perhaps the most far-reaching (and oldest) programs in the areas of compliance standards for the private sector comes from the Independent Commission Against Corruption (ICAC) of Hong Kong. Companies are encouraged to develop compliance standards that interface with both the government and generally legislated standards. The ICAC provides free integrity audits to individuals and organizations. The goal of the integrity audit is to make ethical standards more uniform. The ICAC then provides follow-up services through regular auditing of the effectiveness of their programs. (ICAC, 1995; ICAC, 1996) The other aspects of the ICAC program are heavily into law enforcement and anticorruption efforts that

⁷The Ethics Officer's Association, housed at Bentley College in Massachusetts, is a professional association for corporate ethics officials and was formed in 1994. It already boasts a corporate membership of over 500.

have the effect of “encouraging” the private sector to participate. The question of whether such a tightly regulated program would work in a more heterogeneous and geographically diverse economy is open to question.

There is an obvious need to provide standards for the surrogates of government if the realignment is successful. It will be hard to continue to justify the new public administration regimes if private sector entities become involved in self-dealing or corruption scandals. The cost of ignoring the potential problems in this area ought to be obvious. The blame for scandals will be placed on the newly, reengineered organizations. The result will be that legislators will insist on re-bureaucratizing these programs. Legislative initiatives seldom deal with the fine-tuning of administrative systems. It is more usual to discard these types of reform and return to the previous status quo with a “difference.” The difference will be a far more draconian compliance system, with much less discretion.

Conclusion:

The seven critical questions are simply meant as a foil for effectively thinking through the realignment dilemmas presented by the paradigmatic change in the new public administration movement. The examples used are simply meant to be illustrative of the types of problems that have occurred or can arise. Each of these questions could take an entire paper to fully develop. For that reason, I do not want to suggest that this essay is exhaustive, but rather suggestive. It is important to understand the fragile fabric that holds government institutions and systems together, and not merely assume that systemic changes will automatically occur with the reengineering efforts such as the National Performance Review.

The simplistic solution of “just doing away with the rules” is not the essence of the new public administration. governments should carefully assess the structures necessary to maintain the new

organizational paradigms that they are creating. They must focus on essential programs that provide integrity without overly restricting flexibility. By focusing on the potential problems of realigning ethics processes, I believe they can guard the reforms of the new public administration by protecting the integrity of those programs.

Ideally this will require thoughtful realignment of integrity systems to better fit the realities of the new organizations. It will require a careful mixture of both compliance and aspirational systems. There must be enough compliance to ward off the most base corruptions of public office. There must also be an aspirational vision of integrity in public service, and means for rewarding that behavior. It is certainly true that this “ethic” is easier to capture in an environment where all who do public service are *public* employees, i.e., work directly for the government. However, the realities of modern government dictate otherwise. Most governments have consciously decided to embrace the new public management by shrinking the size of the public work force, privatizing functions, contracting, and eliminating the myriad of controls placed on public workers. In this environment, there must be a recognition of the potential for abuse, as well as the appearance of abuse of public office.

There must also be a fundamental understanding about the purpose of government and what its role is in civil society. Madison in the guise of Publius reminds us:

Justice is the end of Government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. . . [ultimately] individuals are prompted, by the uncertainty of their condition, to submit to a Government which may protect the weak, as well as themselves. (Madison, Federalist # 51)

The question is what residual systems are left in place to protect the integrity of government?

The answer will constitute the “second wave” of the new public administration. The success of the reinvention movement will not only depend on its ability to measure outcomes as *ends*; it must also effectively monitor the *means* to those outcomes. A confusion between ends and means, or a lack of attention to either, will broad brush the entire approach as causing corruption. And, if this happens, the new public administration movement will be just one more arcane footnote in this history of experiments in democratic government.

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